

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5606 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ZAVERBHAI BAJIDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner
MR TH SOMPURA, AGP for Respondent No. 1
Respondent no. 2 served
MR JITENDRA PATEL for Respondent No. 3

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 09/01/97

ORAL JUDGEMENT

Apart from answering the questions regarding the case of the parties and the rival contentions based upon the law and facts, I shall have to answer the question regarding the scope of this Court while acting under

Article 227 of the Constitution of India. The scope of the Gujarat Revenue Tribunal while exercising the revisional jurisdiction under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 shall also have to be examined.

The dispute is between two persons claiming the tenancy rights and the consequential benefits over the land belonging to the respondent no.2 before me-Balaji Mandir Trust, at Randheja, Taluka and District Gandhinagar. The land bearing Survey No.354 admeasuring 1 acre-26 gunthas assessed at Rs.4.37ps. is the subject matter of dispute. In respect of this land, the proceedings under Section 32-G of the Tenancy Act were initiated. It appears that two persons, namely, Sendhabhai Patel, who happens to be the deceased father of the respondent no.3 and Zaverbhai Patel, who happens to be the petitioner before me, had preferred not to remain present before the learned Agricultural Lands Tribunal, on the stipulated date and, therefore, the sale qua the said land came to be declared as ineffective. Zaverbhai Patel, the present petitioner had carried the matter before the Deputy Collector, by filing Appeal under Section 74 of the Tenancy Act. The appeal came to be decided under the orders dated March 7, 1992 and the orders of the Tribunal dated 23.9.1970 came to be quashed and set aside and the matter came to be remanded to the Agricultural Lands Tribunal, for the decision and disposal according to law.

It is not in dispute that the land belonged to Shri Balaji Mandir, a Trust situated at Randheja, under the Gandhinagar Taluka of the District and that the said Temple Trust had certain other lands also belonging to them. In the remanded proceedings, the learned Agricultural Lands Tribunal has come to the conclusion that, indeed the concentration shall have to be not only on 1.4.1957-the Tiller's day, but also on 15.11.1969-the Specified date which shall have to be construed regard being had to the date of the commencement of the Gujarat Devasthan Inams Abolition Act, 1969. The reference was required to be made to the above said date as the Specified date and not on 1st April 1957 because, the land in question belonged to the Trust. Section 88-B of the Tenancy Act, 1948 was operative against the tenant because the said provisions say specifically that, only certain sections would be applicable to the land belonging to certain class or category, and therefore, section 32 of the Act of 1948 has no operation. It is, therefore, abundantly clear that, the tenant on the land on 1.4.1957 could not have become the deemed purchaser of

the land because there was a certificate under Section 88-B in favour of the Temple Trust. The Gujarat Devasthan Inams Abolition Act, 1969 came to be in existence and the Devasthan Inamdars came to be abolished under the said enactment. Because of this position, it appears that, a specific amendment was required to be made in the Tenancy Act, 1948 which came to be made by insertion of Section 88-E in the Act. These provisions would go to show that, with effect from the Specified Date, the lands which are the property of certain institutions for public religious worship shall cease to be exempted under Section 88-B from the provisions contained in other sections. The explanation appended to Section 88-E says that, for the purposes of this section, the specified date would mean, the date of the commencement of the Gujarat Devasthan Inams Abolition Act, 1969, which is 15.11.1969. Therefore, when the remanded proceedings came to be heard again, the learned Agricultural Lands Tribunal was required to decide the question as to whether, who was the tenant and who would become the deemed purchaser of the land in dispute, regard being had to the above said date, namely, 15th November 1969. The learned Agricultural Lands Tribunal, after sitting upon this question and considering certain evidence, has come to the conclusion that the present petitioner would not be entitled to be the deemed purchaser of the land. The learned Tribunal was of the opinion that, this benefit should go to the respondent no.3-Ramabhai Patel, the heir and the legal representative of deceased Sendhabhai Patel. These orders pronounced by the learned Agricultural Lands Tribunal, dated March 11, 1993, came to be challenged, but unsuccessfully, in the appeal before the learned Assistant Collector, (Appeals), Gandhinagar, in Appeal No. SR/83 of 1993. The Appellate Court was conscious of the fact that, the concentration shall have to be not only on April 1, 1957, but on 15.11.1969. There was an endeavour on his part to decide the question, regard being had to the said date, but a careful reading of the decision rendered by the Appellate Court would go to show that, there has been some inter-mixing of the above said two dates and that the concentration was not fully focussed upon the latter date, i.e., Specified date, namely, 15.11.1969. The position is still worse when one refers to the judgment rendered by the learned Member of Gujarat Revenue Tribunal, in Revision Application No. TEN.BA.753 of 1993 decided under the orders dated June 27, 1996. There has been, as usual, a lengthy recital of the contentions of the learned Advocates for the parties. There has been some reference regarding the factual and legal contentions which came to be advanced before the learned

Member. It appears that, after the narration of the rival contentions, the learned Member was satisfied by concluding in the following manner:

"The learned Deputy Collector, Land Reforms, Appeal, has also after hearing both the parties and appreciating the evidence led before the lower Court, confirmed the order of the Mamlatdar and ALT and rejected the appeal filed by the present applicant. Orders of both the lower Courts are elaborate and they have concurrent finding. The lower Courts have appreciated properly the evidence led in the case and, therefore, there appears to be no ground to interfere with the findings of the lower Courts."

The said recital from the orders in the judgment rendered by the learned Member of Gujarat Revenue Tribunal would go to show that the revisional authority had failed to concentrate upon two relevant questions as to whether, the matter was required to be decided keeping in view April 1, 1957 or November 15, 1969 as the relevant and purposeful date. It appears that certain documentary evidence came to be produced at the appellate stage. Moreover, the present petitioner was placing heavy reliance upon a mutation entry under which his name allegedly has been entered in the revenue records along with certain receipts allegedly given to him by the Temple Management. In other words, the Tribunal was required to address to its own self the question falling in the field of law as well as in the field of facts. It appears that the learned Member has failed to take upon himself this exercise. The recital of the finding in the orders of the learned Member of Gujarat Revenue Tribunal would go to show that, all what he has to say is that the orders of the lower Courts are elaborate according to him and there have been the concurrent findings. According to the learned Member, the lower Courts have appreciated the evidence properly and, therefore, according to him, there appears to be no ground to interfere with the findings of the lower Courts. Thus, it is clear that the learned Member rest satisfied by expressing an opinion that the judgment rendered by the courts below were elaborate and that there has been a concurrent finding of facts. In other words, the learned Member has not examined the legal as well as the factual contentions which were being presented before him. The whole purpose of conferring revisional jurisdiction on the Tribunal appears to have been frustrated. When the reference is made to the provisions contained under Section 76 of the Tenancy Act, 1948, it appears that, under the Act, the

Gujarat Revenue Tribunal has been empowered while hearing the revision application to decide as to whether there has been a failure to take evidence or there has been an error in appreciation of the important evidence. These powers, on the other hand, would cast an obligation upon the Gujarat Revenue Tribunal to examine the question even falling within the arena of the appreciation of the important evidence on record. It is not in dispute that the Tribunal was not only authorised, but was also required to decide the legal contentions being raised by the parties before it. The above said recital would go to show that this exercise has not been done. The only course open to this Court appears to be, to remand the matter to the Gujarat Revenue Tribunal, with appropriate directions.

The present petition, therefore, requires to be allowed in part and the same is hereby partly allowed. The orders of the Gujarat Revenue Tribunal under challenge are hereby quashed and set aside and the matter is remanded to the said Tribunal, with a direction to decide the matter afresh. While doing so, the concentration of the Tribunal should be on the factual as well as legal data. The endeavour should be to ascertain as to who would become the deemed purchaser, regard being had to the provisions contained under Section 88-E of the Tenancy Act, 1948. The Tribunal should perform this exercise as early as possible, and at any rate, within a period of three months hereof.

Before parting, the reference shall have to be made to the Supreme Court pronouncement in the case of MOHD. YUNUS, PETITIONER v. MOHD. MUSTAQIM AND OTHERS, RESPONDENTS, AIR 1984 S.C. 38. This pronouncement says that, a mere wrong decision without anything more would not be enough to attract the jurisdiction of the High Court under Article 227 of the Constitution. The emphasis is laid upon the say that the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited, "to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record, much less an error of law.

This decision on which learned Counsel Mr. Jitendra Patel for the respondent no.3 has placed heavy reliance, should not come in the way of learned Counsel Mr. Arvind Patel who appears for the petitioner and urges before me that, here is a case in which the Tribunal has not decided anything and has rest contented by saying that, the Tribunal would agree with the

elaborate decisions rendered by the Courts below. In my opinion, even the limited scope of this Court acting under Article 227 of the Constitution would permit me to examine as to what has been done by the Tribunal in the matter on hand. It appears that, important questions have been touched, but have not been decided and, therefore, the orders rendered by the Gujarat Revenue Tribunal do not remain the orders in eye of law. This decision, therefore, should not stand in our way while we hear and decide the present petition arising under Article 227 of the Constitution.

The petition, therefore, succeeds to the above said extent. The same is hereby accordingly allowed. Rule is made absolute to the said extent.
